IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2007-0131-PR
Respondent,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
NAOMIS WINFREY,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-39601

Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Naomis Winfrey — Yuma
In Propria Persona

E S P I N O S A, Judge.

¶1 In 1993, a jury found petitioner Naomis Winfrey guilty of first-degree murder; first-degree burglary, a dangerous nature offense; and theft by control of property having a value of $1500 or more. He was sentenced on the murder conviction to life in prison with no possibility of release for twenty-five years and to a concurrent, presumptive, 10.5-year term for the burglary conviction. The trial court imposed an aggravated, ten-year prison term

on the theft conviction and ordered it served consecutively to Winfrey's other two sentences. We affirmed his convictions and sentences on appeal, *State v. Winfrey*, No. 2 CA-CR 93-0509 (memorandum decision filed Sept. 12, 1995), and granted review but denied relief in his first post-conviction proceeding, brought pursuant to Rule 32, Ariz. R. Crim. P., *State v. Winfrey*, No. 2 CA-CR 97-0220-PR (memorandum decision filed Nov. 26, 1997).

¶2 In January 2007, Winfrey filed a second petition seeking post-conviction relief. In it, he sought deoxyribonucleic acid (DNA) testing pursuant to A.R.S. § 13-4240, alleging that blood found at the murder scene was the "only physical evidence placing [him] at the scene of the crime" and that DNA testing of the blood would "prove [he had not been]" there. The trial court denied relief, concluding Winfrey had failed to demonstrate a reasonable probability that he would not have been prosecuted or convicted, or that the verdict or sentence in his case would have been more favorable, if DNA testing had been performed on the blood found at the scene. *See* A.R.S. § 13-4240 (A), (C).

¶3 In reaching this conclusion, the trial court noted that the blood from the scene had never been identified as Winfrey's blood. Therefore, Winfrey's "conviction did not rest upon the blood evidence at all." In addition, "[f]our witnesses testified at trial that they heard [Winfrey] directly or indirectly admit to committing the murder and [Winfrey] was found in the victim's car in Phoenix."

¶4 In his petition for review,[1] Winfrey maintains the trial court abused its discretion by denying his request for DNA testing in light of testimony at trial that blood found at the scene was "consistent with" his blood. Winfrey argues the state relied heavily on that testimony, calling three expert witnesses and devoting four days of a five-day trial to discussion of the blood evidence recovered from the scene. In a "supplement" to his petition, Winfrey contends the state "improperly utilized hearsay statements as substantive evidence" and claims his counsel was ineffective in failing to object to their admission.

¶5 We review a trial court's ruling on a petition for post-conviction relief for an abuse of discretion, *State v. Sepulveda*, 201 Ariz. 158, ¶ 3, 32 P.3d 1085, 1086 (App. 2001), and find none here. The record does not support Winfrey's allegations that blood evidence figured prominently in his trial, either in terms of the number of expert witnesses called or the amount of time devoted to their testimony.[2] Moreover, we will not consider the new arguments contained in Winfrey's supplement to his petition for review because they were not presented in his petition to the trial court. *Cf. State v. Lichon*, 163 Ariz. 186, 189, 786 P.2d 1037, 1040 (App. 1989) (trial court should have "meaningful opportunity to

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[1]Winfrey styles his petition a "petition for writ of mandamus." Because a petition for DNA testing pursuant to A.R.S. § 13-4240 is among the post-conviction relief proceedings governed by chapter 13, article 29, A.R.S., we construe the present petition as a petition for review of the trial court's decision. *See* A.R.S. § 13-4239(C); Ariz. R. Crim. P. 32.9(c).

[2]The state called only one witness to testify about analysis performed on blood found at the crime scene, and his entire testimony is recorded in just twelve pages of the trial transcript.

consider" issue before appellate court reviews it on appeal); *see generally* Ariz. R. Crim. P. 32.9. The new arguments are precluded. *See* Ariz. R. Crim. P. 32.2.

¶6 The trial court's correct decision is fully supported by the record in this case and by the applicable law. Because the court clearly identified, addressed, and resolved the issue raised in a manner that this and any other court in the future will be able to understand, we adopt the court's ruling and have no reason to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, although we grant review, we deny relief.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge